2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Article III and preambular paragraphs 4 and 5, especially in their relationship to article IV and preambular paragraphs 6 and 7 (export controls)

Working paper submitted by Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden ("the Vienna Group of Ten")

Draft review language

1. The Conference urges all States parties to ensure that their nuclear-related exports do not assist the development of nuclear weapons or other nuclear explosive devices and that they are in full conformity with the objectives and purposes of the Treaty as stipulated, particularly in articles I, II, III and IV. In this context, and also bearing in mind United Nations Security Council resolution 1887 (2009) the Conference underlines that nuclear export controls are a legitimate, necessary and desirable means of implementing the obligations of States parties under article III of the Treaty, in order not to contribute to a nuclear explosive activity, an unsafeguarded nuclear fuel cycle activity, or acts of nuclear terrorism.

2. The Conference underlines that effective export controls are also central to cooperation in the peaceful uses of nuclear energy, which depends on the existence of a climate of confidence about non-proliferation.

3. The Conference notes that Security Council resolution 1540 (2004), adopted on 28 April 2004, as reaffirmed in Security Council resolutions 1673 (2006) and 1810 (2008), requires all States to take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear weapons, including by establishing and maintaining appropriate effective national export and trans-shipment controls over nuclear weapon-related items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export.

4. The Conference endorses the importance of the Zangger Committee as guidance for States parties in meeting their obligation under article III, paragraph 2, of the Treaty, and invites all States to adopt the Understandings of the Zangger Committee in connection with any nuclear cooperation.

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5. The Conference recommends that the list of items triggering International Atomic Energy Agency (IAEA) safeguards and the procedures for implementation, in accordance with article III, paragraph 2, of the Treaty, be reviewed from time to time to take into account advances in technology, the proliferation sensitivity and changes in procurement practices.

6. The Conference notes that a number of States parties have informed IAEA that they cooperate on a voluntary basis through guidelines for their nuclear-related exports (INFCIRC 254 as amended). States parties note the important and useful role that the Nuclear Suppliers Group can play in guiding States in setting up their national export control policies. States parties took note of the transparency paper prepared by the Nuclear Suppliers Group entitled "The Nuclear Suppliers Group: Its Origins, Role and Activities" (INFCIRC 539 Rev.4).

7. The Conference reiterates that transparency in export controls should continue to be promoted within a framework of dialogue and cooperation among all interested States parties to the Treaty.

8. The Conference reconfirms paragraph 12 of decision 2 ("Principles and objectives for nuclear non-proliferation and disarmament") of the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, which provides that new supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of the full-scope IAEA safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.

9. The Conference decides that new supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material should require, as a necessary precondition, acceptance of an additional protocol based on the model protocol contained in INFCIRC 540 (Corrected).

Annex

Working paper: Export controls

1. The Vienna Group of Ten (the Vienna Group) reaffirms that each State party to the Treaty has undertaken not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material is subject to the safeguards required by article III of the Treaty.

2. The Vienna Group underlines the responsibility that all States parties have, and, in this regard, urges them to ensure that their nuclear-related exports to non-nuclear-weapon States do not assist the development of nuclear weapons or other nuclear explosive devices. The Group reiterates that no State party should transfer any nuclear-related items to any recipient whatsoever unless the transfer is in full conformity with the objectives and the purposes of the Treaty as stipulated, particularly in articles I, II, III and IV. In this context, the Group emphasizes the need to promote understanding among all States parties that nuclear export controls are a legitimate, necessary and desirable means of implementing the obligations of States parties under article III of the Treaty, in order not to contribute to a nuclear explosive activity, an unsafeguarded nuclear fuel cycle activity, or acts of nuclear terrorism.

3. In this regard, the Vienna Group notes that Security Council resolution 1540 (2004), adopted on 28 April 2004, whose provisions were reiterated in Security Council resolutions 1673 (2006) and 1810 (2008), requires all States to take and enforce effective measures to establish domestic controls for preventing the proliferation of nuclear weapons, including by establishing and maintaining appropriate effective national export and trans-shipment controls over nuclear weapon-related items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export. The Group further notes United Nations Security Council resolution 1887 of September 2009, in which the Council unanimously called upon States to adopt stricter national controls for the export of sensitive goods and technologies of the nuclear fuel cycle.

4. The Vienna Group recognizes that revelations in recent years about extensive covert networks related to the procurement and the supply of sensitive nuclear equipment and technology have underlined the need for all States to exercise vigilance in countering proliferation, including through their nuclear export controls.

5. The Vienna Group underlines that effective export controls are also central to cooperation in the peaceful uses of nuclear energy, which depends on the existence of a climate of confidence about non-proliferation. In this respect, the Group notes the clear relationship between the non-proliferation obligations as set out in articles I, II and III and the objectives in regard to peaceful uses as set out in article IV of the Treaty. In this context, the Group reaffirms that nothing in the Treaty should be *interpreted as affecting* the inalienable right of all States parties to the Treaty to undertake research, production and use of nuclear energy for peaceful purposes, without discrimination and in conformity with articles I, II and III of the Treaty. The Group notes the complementary and important role of national export control mechanisms in giving effect to the obligations of States parties, under articles I, II

and III, not to contribute to the proliferation of nuclear weapons; and recognizes that such controls are intended to provide an environment of confidence for international cooperation in the peaceful uses of nuclear energy. The Group notes similarly that recipient States have an obligation to exercise appropriately stringent controls to prevent proliferation.

6. The Vienna Group notes that a number of States parties meet regularly in an informal group known as the *Zangger* Committee, in order to coordinate their implementation of article III, paragraph 2, of the Treaty, related to the supply of nuclear material and equipment. To this end, these States parties have adopted certain Understandings, including a list of items triggering IAEA safeguards, for their exports to non-nuclear-weapon States not parties to the Treaty, as set forth in IAEA document INFCIRC/209, as amended. The *Zangger* Committee's Understandings also relate to exports to non-nuclear-weapon States parties to the Treaty insofar as the recipient State should recognize the items on the trigger list, as well as the procedures and criteria under article III, paragraph 2, of the Treaty as a basis for its own export control decisions, including re-exports.

7. The Vienna Group emphasizes the importance of the *Zangger* Committee in providing guidance to States parties in meeting their obligation under article III, paragraph 2, of the Treaty and invites all States to adopt the Understandings of the *Zangger* Committee in connection with any nuclear cooperation.

8. The Vienna Group recommends that the list of items triggering IAEA safeguards and the procedures for implementation, in accordance with article III, paragraph 2, of the Treaty, be reviewed from time to time so as to take into account advances in technology, proliferation sensitivity, and changes in procurement practices.

9. The Vienna Group notes that a number of States parties have informed IAEA that they cooperate on a voluntary basis through guidelines for their nuclear-related exports (INFCIRC/254, as amended). The Group notes the important and useful role that the Nuclear Suppliers Group can play in guiding States in setting up their national export control policies.

10. The Vienna Group recommends that transparency in export controls should continue to be promoted within a framework of dialogue and cooperation among all interested States parties to the Treaty.

11. The Vienna Group notes the decision taken in September 2008 by a number of States parties, participating in the Nuclear Suppliers Group, to grant an India-specific exception to the full-scope safeguards requirement in the Nuclear Suppliers Group's export control guidelines, based on certain non-proliferation commitments and actions of India (as outlined in IAEA document INFCIRC/734). The commitments of India related, inter alia, to signing and adhering to an additional protocol, exercising restraint in respect of enrichment and reprocessing transfers, strengthening export controls, continuing its moratorium on nuclear testing, and continuing to demonstrate its readiness to work with others towards the conclusion of a multilateral fissile material cut-off treaty. The Vienna Group expects India to honour these commitments in full, noting that Governments participating in the Nuclear Suppliers Group have agreed to consult through regular channels on matters connected with the implementation of all aspects of decision of the Nuclear Suppliers Group, taking into account relevant international commitments or bilateral

agreements with India. The Group notes that the decision of the Nuclear Suppliers Group will remain the basis for civil nuclear cooperation with India by Governments participating in the Nuclear Suppliers Group. The Group reiterates the importance it attaches to universalization of the Treaty, and its hope that India will join the Treaty as a non-nuclear-weapon State.

12. Notwithstanding that decision, the Vienna Group reaffirms that new supply arrangements for the transfer of source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to non-nuclear-weapon States should require, as a necessary precondition, acceptance of full-scope IAEA safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices. The Group urges those supplier States that have not yet done so to require the fulfilment of such conditions without delay.

13. Noting that all non-nuclear-weapon States parties to the Treaty have a legal obligation under article III to accept safeguards stipulated under the Treaty, and also noting that a Safeguards Agreement (INFCIRC 153 (Corrected)), together with an Additional Protocol (INFCIRC 540 (Corrected)), now represents the verification standard for Treaty safeguards, the Group confirms that this verification standard should be a condition for new supply arrangements to non-nuclear-weapon States. The Group recognizes the importance of the provisions of the Additional Protocol related to reporting to IAEA on the export and import of nuclear-related equipment.

14. The Vienna Group notes that article III of the Treaty is designed to detect and prevent the diversion of nuclear material, equipment and technology. This relates to diversion not only at the State level, but also to individuals or subnational groups. The Group affirms, therefore, that transfers of nuclear material, sensitive equipment or technology should take place only if the recipient State has in place an effective and adequate national system of nuclear security. This system comprises Treaty-related IAEA safeguards, an adequate system of physical protection, a minimum set of measures to combat illicit trafficking, and rules and regulations for appropriate export controls in case of re-transfers.

15. While the responsibility for establishing and implementing such a system rests with the concerned State, supplying States parties have the responsibility for seeking assurance that such a system is in place in the recipient State as a necessary precondition for their receiving nuclear supplies.